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LETTER DATED 8 SEPTEMBER 1998 FROM THE PRESIDENT OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991 ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to report to the Security Council the continuing refusal of the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro)to cooperate with the International Tribunal by failing to arrest and transfer to its custody three persons indicted by the International Tribunal: Mile Mrkšic, Miroslav Radić and Veselin Šljivančanin. I am bringing this to the attention of the Security Council at the request of the Presiding Judge of Trial Chamber I and in the context of recent initiatives by the United Nations to uphold and develop international criminal law.

The International Tribunal indicted the three individuals on 7 November 1995 for the murder of 260 unarmed men following the fall of the city of Vukovar in November 1991. A warrant for their arrest was issued and transmitted to, inter alia, the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), as the accused were believed to be residing in its territory. As that warrant was not executed, the judge who confirmed the indictment order the Prosecutor to submit the case for review by a panel of three judges. On 3 April 1996, Trial Chamber I concluded that there existed sufficient grounds for believing that Mile Mrkšic, Miroslav Radić and Veselin Šljivančanin committed the offences with which they are charged in the indictment and certified that "the failure to effect service of the indictment was due to the refusal of the Federal Republic of Yugoslavia (Serbia and Montenegro) to cooperate with the Tribunal". The Trial Chamber further issued international arrest warrants against the three accused which were subsequently transmitted to all States and to the Implementation Force established under Annex I-A of the General Framework Agreement for Peace in Bosnia and Herzegovina (Dayton Agreement).

Acting upon the recommendation of the Trial Chamber, my predecessor, President Cassese, on 24 April 1996 reported the refusal of the Federal Republic of Yugoslavia (Serbia and Montenegro) to arrest the three men. President Cassese noted that in not only refusing to comply with the orders of the International Tribunal but in promoting, supporting and continuing to pay

one of the indicted men, the Federal Republic of Yugoslavia (Serbia and Montenegro) demonstrated its disregard and disrespect for its obligations under international law. On 8 May 1996, the President of the Security Council reminded the Federal Republic of Yugoslavia (Serbia and Montenegro) of those obligations, deplored the failure to execute the arrest warrants and called for the immediate execution of the warrants. He further stated that the Security Council would remain seized of the matter.

Since that date, the three individuals have remained at liberty, alleged to be residing in Serbia. Indeed, the authorities of the Federal Republic of Yugoslavia (Serbia and Montenegro) have not refuted such allegations. The Office of the Prosecutor of the International Tribunal has repeatedly demanded the arrest of the accused. On 19 December 1997, following a request from the Prosecutor, Trial Chamber II ordered the authorities to serve the accused with the indictment and various other documents and to notify the Registrar of the whereabouts of the accused. On the same day, Trial Chamber II requested the authorities to ensure the publication in the Federal Republic of Yugoslavia (Serbia and Montenegro) of a notice to the accused to surrender immediately to the International Tribunal.

The persistent and continuing rejection of orders to arrest Mile Mrkšic, Miroslav Radić and Veselin Šljivančanin is but the most blatant example of the refusal of the Federal Republic of Yugoslavia (Serbia and Montenegro) to cooperate with the International Tribunal. Such intransigence has formed a consistent pattern since the International Tribunal was established by the Security Council in its resolution 827 (1993) of 25 May 1993. Notable in this regard is failure to take measures necessary under domestic law to implement the provisions of resolution 827 (1993) and the statute of the International Tribunal, as required by paragraph 4 of the resolution. Indeed, the Federal Republic of Yugoslavia (Serbia and Montenegro) remains the only signatory to the Dayton Agreement that has neither adopted legislation to facilitate cooperation with the International Tribunal, nor taken steps to transfer to the International Tribunal's custody those indictees in its territory.

Put simply, such conduct is illegal. The Security Council acted under Chapter VII of the Charter of the United Nations when it created the International Tribunal. In his report to the Security Council prior to the adoption of resolution 827 (1993), the Secretary-General noted that orders of the International Tribunal have the status of actions under Chapter VIII (S/25704, paras. 23 and 125). Thus, all States are legally required to comply with its orders, including warrants of arrest and surrender. Moreover, the Federal Republic of Yugoslavia (Serbia and Montenegro), as a signatory to the Dayton Agreement, is further bound to cooperate with the International Tribunal (General Framework Agreement, article IX; Annex I-A, article X; Annex 7, article III (2)). In the modern international community, such contempt for the authority of the Security Council and international law should not be countenanced.

The Security Council created the International Tribunal, determining that such a measure was appropriate and necessary to bring about the restoration of international peace and security. The achievement of this goal - and thus of the International Tribunal's mandate - respectfully requires the complete

support of the Security Council. States, collectively and individually, have assisted the International Tribunal in the face of recalcitrance by other States in the former Yugoslavia, acting through multinational armed bodies to force compliance with the International Tribunal. Of particular note was the arrest of an individual who was indicted with Mile Mrkšic, Miroslav Radić and Veselin Šljivančanin. However, no such situation pertains in the Federal Republic of Yugoslavia (Serbia and Montenegro). Accordingly, the International Tribunal is dependent on the Security Council to take the necessary action to ensure the compliance of the Federal Republic of Yugoslavia (Serbia and Montenegro). The conduct of the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), therefore, displays contempt for the Security Council. Not only does the Federal Republic of Yugoslavia (Serbia and Montenegro) consider itself to be outside international law, it has become a haven for fugitives from international law.

In this context, I note that recent measures by the Security Council have demonstrated its commitment to upholding international criminal law. As the Security Council has reiterated, all States must comply with actions taken under Chapter VII and all individuals accused of criminal conduct must be held accountable, regardless of where or under whose protection they reside. Similarly, the adoption in July of a treaty establishing a permanent International Criminal Court is a further indication that the international community is committed to the principle of accountability for those who violate the law of nations.

Closely related to this is the situation in the province of Kosovo. As has been noted by the Security Council, the International Committee of the Red Cross and the United Nations High Commissioner for Refugees, recent events there threaten to destabilize further the Balkan region. The Security Council in its resolution 1160 (1998) urged the Office of the Prosecutor to investigate acts that might fall within the jurisdiction of the International Tribunal. Indeed, it noted the obligation of the Federal Republic of Yugoslavia (Serbia and Montenegro) to cooperate with the International Tribunal. This is particularly relevant considering its record of non-cooperation with Security Council resolutions, in particular those concerning the International Tribunal. The three individuals from the Federal Republic of Yugoslavia (Serbia and Montenegro) who have been charged with serious violations of international humanitarian law have not been arrested almost three years after the issuance of arrest warrants. They have enjoyed impunity and immunity. The lesson of this is not that individuals will be held accountable, but that, through the illegal actions of their Governments, they may be shielded from the international legal process to which all States are bound.

For these reasons, I respectfully submit that it is imperative that the reprehensible conduct of the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) in violating the Charter of the United Nations, resolutions of the Security Council and the Dayton Agreement should no longer be tolerated.

(Signed) Gabrielle KIRK MCDONALD
President